IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 2306 (S/S) of 2001
Old No.
Writ Petition No. 29424 of 2000

1. Umesh Prasad, son of Sri Rameshwar Prasad, resident of Village- Garhtora, P.O. – Gupta Kashi, District- Rudra Prayag.
2. Virendra Dutt, son of Sri Chandra Mani, C/o Sri Yogendra Puri, near Hanuman Mandir, Gurudwara Road, Sri Nagar, District – Pauri Garhwal.

…….Petitioners

V e r s u s

1. State of U.P. through Secretary, Education (Madhyamik), U.P., Lucknow
2. Regional Joint Director of Education, Garhwal Mandal District- Pauri.
3. District Inspector of Schools, District- Chamoli.
4. District Inspector of Schools, Tehri Garhwal.

…….Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri S.K. Posti, learned counsel for the petitioner and Sri Subhash Upadhyay, learned standing counsel for the respondents.

By means of this writ petition, petitioner have prayed to issue a writ in the nature of Certiorari quashing the order dated 17.06.1999 passed by Joint Director of Education, Garhwal Mandal, Pauri canceling the order of appointment dated 18.11.1998. Both the petitioners were appointed as Assistant Teacher on 18.11.1998 by the Joint Director of Education. Later on some complaint was made against the then Joint Director of Education, Garhwal Mandal, Pauri and the whole selection list dated 18.11.1999 was cancelled vide order dated 17.06.1999.

Petitioner no. 2 was again appointed on 18.06.1999 and is still continuing in service. He has claimed continuity in service as well as salary for the period from 01.01.1999 to 30.06.1999 on the ground that he has been working since his earlier selection in the Institution. This fact has not been denied by the respondents. In para 12 of the counter affidavit it is submitted that the salary for the aforesaid period has already been paid to the petitioners with a condition that payment is made subject to the decision of the writ petition.

The appointment order of the petitioners was cancelled on 17.06.1999 and on the very next date, fresh appointment was given to the petitioner no. 2, which indicate that the appointment of petitioner no. 2 was in accordance with law and as such, he is entitled for continuity in service and for payment of salary for the period of 01.01.1999 to 30.06.1999.

So far as petitioner no. 1 is concerned, he has filed writ petition no. 28207 of 1999 before Hon'ble Allahabad High Court against cancellation of his appointment order dated 17.06.1999 and has obtained stay order in his favour. The said writ petition is still pending, as such, the question of continuity of his service shall be decided in that writ petition. So far as the salary of aforesaid period is concerned the same has already been paid with a condition that the payment is made subject to the decision of the writ petition, as stated by respondents in para 12 of the counter affidavit.

For the reasons recorded above, order dated 17.06.1999 so far as it relates to petitioner no. 2 is quashed. The writ petition is allowed. No order as to costs.

(M.M. Ghildiyal, J)

March 20, 2006
SKSharma